SUBCOMMITTEE NO. 3 Agenda
Health, Human Services, Labor & Veteran's Affairs

Chair, Senator Elaine K. Alquist

Senator Alex Padilla
Senator Dave Cogdill

March 12, 2007

10:00 AM

Room 4203
(John L. Burton Hearing Room)

(Consultant: Diane Van Maren)

Item	**Department**
4440	**Department of Mental Health *(Selected Issues as Noted)***

- ***State Hospitals***
- ***Community Mental Health***

PLEASE NOTE: Only those items contained in this agenda will be discussed at this hearing. *Please* see the Senate File for dates and times of subsequent hearings. Issues will be discussed in the order as noted in the Agenda unless otherwise directed by the Chair. Thank you.

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Department of Mental Health

A. OVERALL BACKGROUND

Purpose and Description of Department. The Department of Mental Health (DMH) administers state and federal statutes pertaining to mental health treatment programs. The department directly administers the operation of five State Hospitals—Atascadero, Coalinga, Metropolitan, Napa and Patton, and acute psychiatric programs at the California Medical Facility in Vacaville and the Salinas Valley State Prison.

The department provides hospital services to civilly committed patients under contract with County Mental Health Plans (County MHPs) while judicially committed patients are treated solely using state funds.

Purpose and Description of County Mental Health Plans: Though the department oversees policy for the delivery of mental health services, counties (i.e., County Mental Health Plans) have the primary funding and programmatic responsibility for the majority of local mental health programs as prescribed by State-Local Realignment statutes enacted in 1991 and 1992.

Specifically counties are responsible for: (1) all mental health treatment services provided to low-income, uninsured individuals with severe mental illness, within the resources made available, **(2)** the Medi-Cal Mental Health Managed Care Program, **(3)** the Early Periodic Screening Diagnosis and Testing (EPSDT) Program for children and adolescents, **(4)** mental health treatment services for individuals enrolled in other programs, including special education, CalWORKs, and Healthy Families, and **(5)** programs associated with the Mental Health Services Act (Proposition 63).

Overall Governor's Budget. The **budget proposes expenditures of $4.8 billion ($1.9 billion General Fund) for mental health services, an increase of $652 million (decrease of $217.2 million General Fund) from the revised current-year budget.** It should be noted that the decrease of $217.2 million in General Fund support compared to the revised current-year is due to the large number of increases in the revised current-year budget adjusted after the enactment of the Budget Act of 2006. (These figures exclude proposed capital outlay expenditures.)

Of the total amount, $1.2 billion ($1.1 billion General Fund) and 10,900 positions are proposed to operate the State Hospital system. The remaining $3.4 billion ($762.8 million General Fund) is for community-based mental health programs.

In addition to the above expenditures, the DMH is also proposing capital outlay expenditures of $13.7 million ($6.2 million General Fund and $7.5 million Public Building Construction Fund) for 2007-08. These funds would be used for: (1) the construction of the main kitchen and satellite kitchens at Metropolitan, Napa and Patton state hospitals; (2) a study of the kitchen facilities at Atascadero State Hospital; (3) preliminary plans and working drawings for fencing of secure beds at Metropolitan State Hospital; (4) the replacement of the bulk liquid oxygen storage tank at Napa State Hospital; and (5)

upgrade the telecommunications infrastructure at Metropolitan State Hospital.
Further, it is estimated that almost $1.3 billion will be available in the Mental Health Subaccount (County Realignment Funds) which does not directly flow through the state budget. Counties use these revenues to provide necessary mental health care services to Medi-Cal recipients, as well as indigent individuals. The total amount reflects an increase of $90.4 million (County Realignment Funds) or almost 7.4 percent over the anticipated current-year level.

Summary of Expenditures (dollars in thousands)	**2006-07**	**2007-08**	**$ Change**	**% Change**
Program Source				
Community Services Program	$2,934,452	$3,489,904	$555,452	18.9
Long Term Care Services	$1,105,049	$1,233,828	$128,779	11.6
State Mandated Local Programs	$66,000	0	-66,000	100
Subtotal	**$4,105,501**	**$4,723,732**	**$618,231**	**15**
Capital Outlay for State Hospitals	$42,629	$13,698	-$28,931	-67.8
Total, Program Source	**$4,148,130**	**$4,737,430**	**$589,300**	**14.2**
Funding Source				
General Fund (includes Capital Outlay)	$2,131,741	$1,904,283	-$227,458	-10.7
General Fund, Proposition 98	$13,400	$18,400	$5,000	37.3
Mental Health Services Fund (Proposition 63 of 2004)	$515,826	$1,509,954	$994,128	192
Federal Funds	$63,292	$63,334	42	--
Reimbursements	$1,380,526	$1,232,344	-$148,182	-10.7
Traumatic Brain Injury Fund	$1,211	$1,165	-$46	-3.8
CA State Lottery Education Fund	$95	$95	0	0
Licensing & Certification Fund	$357	$357	0	0
Public Buildings Construction Fund	$41,682	$7,498	-$34,184	-82
Total Department	**$4,148,130**	**$4,737,430**	**$589,300**	**14.2**

B. ISSUES FOR "VOTE ONLY" (Items 1 through 3, to Page 6)

1. Healthy Families Program Adjustments for Mental Health Services

Issue: The **budget proposes an increase of $9.8 million ($537,000 General Fund and $9.2 million in Reimbursements from the Managed Risk Medical Insurance Board) for the Healthy Families Program (HFP).** This proposed increase includes $8.4 million for supplemental mental health services and $837,000 for county administration.

The DMH projects total expenditures of $42.5 million (total funds) for the HFP for 2007-08 for supplemental mental health services. Of this total amount, $38.6 million is for services and $3.9 million is for county administration.

Counties are currently responsible to contribute 35 percent of total HFP Program and administrative costs. The remaining 65 percent is funded using federal funds transferred from the Managed Risk Medical Insurance Board (i.e., who administer the HFP Program for the state) to the DMH for this purpose. HFP services provided to legal immigrants are funded using 100 percent state General Fund support.

Background—What is the HFP and How are Supplemental Mental Health Services Provided? The Healthy Families Program provides health insurance coverage, dental and vision services to children between the ages of birth to 19 years with family incomes at or below 250 percent of poverty (with income deductions) who are not eligible for no-cost Medi-Cal.

The enabling Healthy Families Program statute linked the insurance plan benefits with a supplemental program to refer children who have been diagnosed as being seriously emotionally disturbed (SED). **The supplemental services provided to Healthy Families children who are SED can be billed by County Mental Health Plans to the state for a federal Title XXI match. Counties pay the non-federal share from their County Realignment funds (Mental Health Subaccount) to the extent resources are available.** With respect to legal immigrant children, the state provides 65 percent General Fund financing and the counties provide a 35 percent match.
Under this arrangement, the Healthy Families Program health plans are required to sign Memoranda of Understanding (MOU) with each applicable county. These MOUs outline the procedures for referral. It should be noted that the health plans are compelled, as part of the required Healthy Families benefit package and capitation rate, to provide certain specified mental health treatment benefits *prior* to referral to the counties.

Subcommittee Staff Comments and Recommendation--Approve: The proposed increase reflects technical adjustments. The adjustment is consistent with the forecast methodology used in past years. No issues have been raised on this proposal. **It is therefore recommended to approve as budgeted.**

(Vote Only Calendar continued)

2. Adjustment for the Early Mental Health Initiative (EMHI)

Issue. The budget proposes a $5 million (Proposition 98 General Fund) increase for the Early Mental Health Initiative (EMHI) for total program expenditures of $15 million (Proposition 98 General Fund) for 2007-08.

EMHI grants are awarded on a competitive basis for three years to public elementary schools to provide services to students in K through Third grades who are experiencing mild to moderate school adjustment difficulties. The chart below displays how the grant funds would be allocated across the three years. School sites must also contribute funding towards their individual program.

	Year 1 Funds Awarded 2006-07	Year 2 Funds Awarded 2006-07	Year 3 Funds Awarded 2004-05	Total
Funding Level	$5 million (one time)	$5 million	$5 million	$15 million
Grants (3 yrs)	50	51	52	153
Sites	139	150	159	448
Children Served	5,273	5,273	5,273	15,819

Background—What is EMHI? EMHI was established in 1991 through Assembly Bill 1650. It is designed to enhance the social and emotional development of young students and to minimize the need for more costly services as they mature. Students from Kindergarten through Third Grade who are enrolled in public schools are the target audience.

The EMHI has been independently evaluated and data is available for 7 years of the program (for both pre and post data participants). These findings indicate that the recipients of EMHI-funded services make significant improvements in social behaviors and school adjustment as evaluated by both teachers and school-based mental health professionals.

Subcommittee Staff Recommendation--*Approve*. No issues have been raised on this proposal. **It is therefore recommended to approve as budgeted.**

(Vote Only Calendar continued)

3. Convert Limited-Term Positions to Permanent for Medicare Part D

Issue. The DMH is **requesting a total increase of $502,000 ($342,000 General Fund) to fund a total of 8 positions to continue administrative and program responsibilities required to comply with the federal Medicare Prescription Drug Improvement and Modernization Act (Part D).** Of these positions, one would be for DMH headquarters' office and the remaining 7 positions would be located in the State Hospitals.

These 7 positions were provided in the Budget Act of 2005 as two-year limited term positions. This request would make them permanent. The DMH states that these positions are necessary in order to continue to have this program operate smoothly.

Background—Medicare Part D Implementation in the State Hospitals. The federal Part D established a new prescription drug program effective as of January 1, 2006. The DMH operates its five State Hospital pharmacies as "long-term" care pharmacies and contracts with prescription drug plans for the cost of drugs for enrolled individuals.

Under Part D, Medicare eligible state hospital patients are required to choose a prescription drug plan. If a drug for a state hospital patient is not on the prescription drug plan formulary, the drug will be provided by the State Hospital through other means. About 95 percent of the drugs used by the State Hospital patients will be on the prescription drug plan formulary.

Subcommittee Staff Recommendation--*Approve*. No issues have been raised on this proposal. **It is therefore recommended to approve as budgeted.**

C. ISSUES FOR DISCUSSION – State Hospitals

Overall Background and Funding Sources. The department directly administers the operation of five State Hospitals—Atascadero, Metropolitan, Napa, Patton, and Coalinga. In addition, the DMH administers acute psychiatric programs at the California Medical Facility in Vacaville, and the Salinas Valley State Prison.

Patients admitted to the State Hospitals are generally either (1) civilly committed, or (2) judicially committed. As structured through the State-Local Realignment statutes of 1991/92, County Mental Health Plans (County MHPs) contract with the state to purchase State Hospital beds. County MHPs reimburse the state for these beds using County Realignment Funds (Mental Health Subaccount).

Judicially committed patients are treated solely using state General Fund support. The majority of the General Fund support for these judicially committed patients is appropriated through the Department of Mental Health (DMH).

Background—Overall Classifications of Penal Code Patients. Penal Code-related patients include individuals who are classified as: **(1)** not guilty by reason of insanity (NGI), **(2)** incompetent to stand trial (IST), **(3)** mentally disordered offenders(MDO), **(4)** sexually violent predators (SVP), and **(5)** other miscellaneous categories as noted.

The DMH uses a protocol for establishing priorities for penal code placements. This priority is used because there are not enough secure beds at the State Hospitals to accommodate all patients. This is a complex issue and clearly crosses over to the correctional system administered by the CA Department of Corrections and Rehabilitation (CDCR). The DMH protocol is as follows:

1. Sexually Violent Predators have the utmost priority due to the considerable public safety threat they pose.
2. Mentally Disordered Offenders have the next priority. These patients are former CDCR inmates who have completed their sentence but have been determined to be too violent to parole directly into the community without mental health treatment.
3. *Coleman v. Schwarzenegger* patients must be accepted by the DMH for treatment as required by the federal court. *Generally* under this arrangement, the DMH must have State Hospital beds available for these CDCR patients as required by the Special Master, J. Michael Keating Jr. If a DMH bed is not available the inmate remains with the CDCR and receives treatment by the CDCR.
4. Not Guilty by Reason of Insanity is the next priority.
5. Incompetent to Stand Trial is the last priority. It should be noted that there are about 250 to 300 individuals who are incompetent to stand trial who are presently residing in County jails due to the shortage of beds within the State Hospital system.

(Overall Background on State Hospitals continued)

Summary Chart of the Overall State Hospital Population. **As noted in the table below**, of the total estimated patient population *over 91 percent* of the beds are designated for penal code-related patients and less than 10 percent are to be purchased by the counties, primarily by Los Angeles County (about 242 beds are for them). The largest projected increase is in SVPs, followed by MDO's and then County purchased beds.

DMH State Hospital Caseload Summary Projection *(DMH Estimate)*

Category of Patient	**Current Year Caseload (revised)**	**Budget Year Caseload**	**Increase Over Current Year**
Sexually Violent Predators (SVPs)	889 (618 at Budget Act)	1,329	**440**
Medically Disorder Offenders (MDOs)	1,324	1,377	**53**
Not Guilty by Reason of Insanity	1,314	1,305	**-9**
Incompetent to Stand Trial	1,129	1,091	**-38**
Penal Code 2684s & 2974s (Referred for treatment by CDCR)	752	752	0
Other Penal Code Patients (various)	118	11	0
CA Youth Authority Patients (Metro SH)	30	30	0
SUBTOTAL Penal Code-Related		**6,102**	**446**
County Civil Commitments	520	**542**	**22**
TOTAL ESTIMATED PATIENTS	**6,076**	**6,644**	**468**

Overall Budget for the State Hospital System. Total expenditures of **$1.2billion** ($1.1 billion General Fund) and 10,900 positions are proposed to operate the five State Hospitals which serve a projected total population of 6,544 patients for 2007-08, including patients located at Vacaville and Salinas Valley (CDCR contracts with DMH contracts to administer the psychiatric units at these two facilities).

The budget reflects an increase of $114.8 million ($88.3 million General Fund) and 1,020 positions over the revised current-year.

These proposed increases are primarily due to: (1) implementation of Proposition 83—Jessica's Law—and Senate Bill 1128 (Alquist), Statues of 2006, both pertaining to sex offenders; **(2)** continued implementation of a settlement agreement with the federal government regarding the Civil Rights for Institutionalized Persons Act (CRIPA); and **(3)** continued implementation of the Coleman Court decision. Each of these issues will be discussed in this Agenda further below.

(Overall Background on State Hospitals continued)

Summary of Projected Patient Population at Each State Hospital. The proposed patient caseload for each State Hospital is shown on the chart below. Each State Hospital is unique, contingent upon its original design, proximity to population centers, types of patients being treated at the facility and types of treatment programs that are available at the facility.

Further, some of the State Hospitals, most notability Atascadero, Patton and Coalinga (recently built and activated) have more comprehensive security than others. As such, there are existing restrictions on where certain penal code patients can be housed. These agreements have been forged with local communities and should be comprehensively discussed if changes are to be proposed by the Administration.

Table: DMH Summary of Population by Hospital *(DMH Estimate)*

Hospital Summary	**Budget Act of 2006 (6/30/2007)**	***Revised* 2006-07 (6/30/2007)**	**Proposed Patient Growth for 2007-08**	**Proposed 2007-08 Population (6/30/08)**
Atascadero	1,295	1,361	7	1,368
Coalinga	717	922 (up 205 all SVP)	440 (all SVP caseload)	1,362
Metropolitan	667	667	21	688
Napa	1,195	1,195	0	1,195
Patton	1,525	1,525	0	1,525
Vacaville	270	270	0	270
Salinas	136	136	0	136
TOTALS	**5,806**	**6,076 (271 more over the Budget Act)**	**468 (over the revised Current Year)**	**6,544**

Discussion of the State Hospital issues begins on the next page (Page 10).

1. Update on CRIPA & Department's Technical Error on Budgeting Positions

Issues. First, the **DMH is requesting an increase of $29.6 million (General Fund) for 2007-08 to fund 331 positions at the State Hospitals.** This request pertains to an error made by the Administration regarding their request for positions related to deficiencies in California's State Hospitals identified by the federal US Department of Justice (US DOJ) under the federal Civil Rights of Institutionalized Persons Act (CRIPA).

Specifically, the Administration entered into a **Consent Judgment** with the US DOJ regarding the State Hospitals in order to comply with necessary requirements, including making significant changes regarding treatment and rehabilitation programming, level-of-care staffing patterns, patient physical health services and reporting requirements. **The DMH received significant increases in staff and funding for the State Hospitals for compliance with the CRIPA Consent Judgment through the Budget Act of 2006.**

The DMH states that in submitting their request to the Legislature for last year, they inadvertently miscalculated the costs for both 2006-07 (short by $14.8 million General Fund) and for 2007-08 (short by $29.6 million General Fund).

Second, the Subcommittee has requested the DMH to provide a status update on meeting the federal CRIPA Consent Judgment requirements. **The Subcommittee is substantially concerned that the DMH is not able to fill key clinical positions, as well as certain public safety and facility operation positions at the State Hospitals.** If momentum is lost by the DMH in filling these positions and making the substantive changes at the State Hospitals for which the Consent Judgment legally demands, then the potential for further erosion of the State Hospital system is potentially imminent.

Background—Deficiencies at State Hospitals Lead to US DOJ Consent Judgment Regarding CRIPA. In July 2002, the U.S. DOJ completed an on-site review of conditions at Metropolitan State Hospital. Recommendations for improvements at Metropolitan in the areas of patient assessment, treatment, and medication were then provided to the DMH. Since this time, the U.S. DOJ identified similar conditions at Napa, Patton, and Atascadero (Coalinga was not involved). **The Administration and US DOJ finally reached a Consent Judgment on May 2, 2006.**

This Consent Judgment provides a timeline for the Administration to address the CRIPA deficiencies and included agreements related to treatment planning, patient assessments, patient discharge planning, patient discipline, and documentation requirements. It also addresses issues regarding quality improvement, incident management and safety hazards in the facilities.

A key component to successfully addressing the CRIPA deficiencies is implementation of the "Recovery Model" at the State Hospitals. Under this model, the hospital's role is to assist individuals in reaching their goals through individualized mental health treatment, and self determination.

The “Recovery Model”, as required by the Consent Judgment, includes such elements as the following:

- Treatment is delivered to meet individual’s needs for recovery in a variety of settings including the living units, psychosocial rehabilitation malls and the broader hospital community.
- There are a broad array of interventions available to all individuals rather than a limited array.
- A number of new tracking and monitoring systems must be put in place to continually assess all major clinical and administrative functions in the hospitals.
- Incentive programs—called “By Choice” will be used to motivate individuals to make positive changes in their lives.

Background—Vacancies Abound at State Hospitals *(See Hand Out*). The DMH has received budget augmentations to fund certain positions at the State Hospitals to implement the CRIPA Consent Judgment, as well as to address treatment needs identified in the *Coleman v Schwarzenegger* agreement (with Special Master Keating). As noted by data below, many of these positions have not been filled.

At the request of the Subcommittee, the DMH provided a listing of vacant *clinical* positions as of December 31, 2006. As noted in this chart, there were 1,181 vacant clinical positions, or 16.5 percent of the clinical positions overall. The following should be noted with respect to these clinical vacancies:

- 725 of the vacant clinical positions, or over 60 percent of the entire vacancies, are for “CRIPA”-related functions;
- 112 vacancies, or 36 percent of this classification, are for Staff Psychiatrists;
- 41.5 vacancies, or 70 percent of this classification, are for Senior Psychologists;
- 101 vacancies, or 30 percent of this classification, are for Rehabilitation Therapist;
- 236 of the vacancies, or 12 percent of this classification, are for Psychiatric Technicians;
- 36 of the vacancies, or 42 percent of these classifications, are for the Pharmacist I and II positions.

In addition, the DMH has also provided a more recent chart (as of February 15, 2007) regarding personnel classifications related to *Coleman v. Schwarzenegger*. This chart (see hand outs) displays further erosion in filling positions, most notably the following:

- 43 percent vacancy for Staff Psychiatrists;
- 88 percent vacancy for Senior Psychiatrists;
- 87 percent vacancy for Senior Psychologists; and
- 77 percent vacancy for Supervising Senior Psychologists.

Emergency Contracting—DMH Using Contracts Due to Severe Staff Shortages. Due to the severity of staff shortages at the State Hospitals, primarily in the clinical and professional classifications as noted above, **the DMH is issuing emergency contracts, as authorized by the Department of General Services and Department of Personnel Administration, to contract with *national* providers.** The emergency contracting process can only be utilized for one-year.

The costs of these DMH emergency contracts vary as the fee schedule negotiated and included in the contracts cover such items as travel, per diem, and any special enhancements due to geographical issues or specialty licenses. **To date, the estimated cost of these contracts is $14.4 million (General Fund). However it is anticipated that additional contracts, particularly for clinical staff, will be necessary. At this time, the costs for these emergency contracts are being absorbed within the existing DMH State Hospital budget since General Fund savings due to the state employee vacancies is available.**

Further, it should be noted that the cost of the clinical employees in these contracts in many cases is *double* the amount the DMH equivalent salaried classification receives. As such, this process raises the question of why the Administration has not taken additional measures to recruit and retain the DMH clinical positions, as well as other key safety and administrative positions, such as Hospital Peace Officer, at the State Hospitals.

Background—DMH Salaries Are Not Competitive with CDCR. The Administration, including the Department of Personnel Administration, is well aware of concerns from several state departments responsible for providing medical care, including the DMH, with regard to the availability of qualified medical personnel. While this situation has been critical for some time, it has been further exacerbated by recent court decisions resulting in significant salary increases for medical personnel employed by the CDCR.

Examples of the salary gaps between the DMH and the CDCR for clinically equivalent classifications is contained in the Hand Outs. In many cases, the CDCR salaries are double those provided to DMH employees. As such, many DMH employees have left to work at CDCR facilities. At present this is particularly a problem at Atascadero State Hospital and Napa State Hospital.

Subcommittee Staff Recommendation. Compliance with the US DOJ Consent Judgment regarding CRIPA is of the utmost importance. However, the number of vacancies within the State Hospital system, coupled with the salary disparities, particularly for key clinical positions (such as Psychiatrist) and safety positions (such as Hospital Peace Officers), raises significant issues as to whether the CRIPA requirements and timelines can be effectively met. The use of emergency contracting is only a stop-gap mechanism to be used on time limited basis.

It should be recognized that the employees at the State Hospitals are diligently striving to meet the CRIPA requirements and they should be commended for their extraordinary efforts.

With respect to the budget request, it does indeed appear that the DMH miscalculated

the baseline funding needed to sustain the positions needed for CRIPA. The LAO has also verified the DMH miscalculation. **As such, the Administration's budget request to increase by $29.6 million (General Fund) should be approved.**

Key questions clearly remain regarding next steps. **The federal CRIPA evaluation team has the following upcoming schedule for reviewing the state's implementation efforts:**

- Metropolitan State Hospital — March 12 to March 16, and June 17 to June 22.
- Atascadero State Hospital — April 23 to April 27.
- Patton State Hospital — June 4 to June 8.
- Napa State Hospital — July 23 to July 27.

It is therefore also recommended to require the DMH to report back on the implementation of the CRIPA Consent Judgment in our Subcommittee hearing scheduled for Monday, April 30th. At this time additional information can be obtained regarding the filling of vacancies, the use of emergency contracting and comments made by the federal CRIPA team.

Questions. The Subcommittee has requested the DMH to respond to the following questions:

1. DMH, Please provide a brief update on the implementation of the US DOJ Consent Judgment regarding CRIPA.
2. DMH, How will the vacancies affect CRIPA requirements, as well as Coleman requirements? In addition to the clinical and medical classifications, are there concerns with filling certain "non-level-of-care" positions, such as Hospital Peace Officer? How has overtime for existing employees been affected?
3. DMH, Are certain State Hospitals, such as Atascadero State Hospital, operating at below their licensed capacity due to the shortage of clinical staff and overall vacancies?
4. DMH, Is the Administration presently seeking any salary adjustments for key clinical staff and key public safety staff in order to have better recruitment and retention at the State Hospitals?
5. DMH, What other options may there be to address the recruitment and retention issues?

2. Proposed Baseline Population at the State Hospitals

Issue. The **budget proposes an increase of $1.1 million** ($502,000 General Fund and $557,000 County Realignment Funds) **to fund 17 positions, including Psychiatric Technicians, Registered Nurses and Teachers to support an increase of 28 patients at the five State Hospitals.**

(This is the Administration's proposed *baseline* population adjustment. Additional patient adjustments, such as for implementation of Jessica's Law and Senate Bill 1228 (Alquist), Statutes of 2006, are discussed below in this Agenda.)

This estimate is based upon a methodology used to project patient population. A level-of-care staffing model is then used to project the number and type of staff to be provided for the baseline patient population. The level-of-care staffing model was developed by the Administration and corresponds to state licensing practices.

Staff Recommendation—Hold Open. The DMH will be recalculating the State Hospital caseload at the time of the Governor's May Revise since they will have more complete caseload data from which to project. As such, it is recommended to hold this issue open pending receipt of this update.

Questions. The Subcommittee has requested the DMH to respond to the following questions.

1. DMH, Please provide a brief summary as to how the overall Hospital Population is calculated.

3. Proposed Implementation of SB 1128 (Alquist), Statutes of 2006 & Proposition 83: *Three Issues*—-(A) Evaluation Costs, (B) Estimated State Hospital Population for SVP's, and (C) DMH Administrative Costs

Over All Issue. Senate Bill 1128 (Alquist), Statutes of 2006, and Proposition 83 restructure the state's administration of treating Sexually Violent Predators (SVPs).

The budget proposes *three* adjustments related to these statutory changes for a total proposed increase of $28.9 million (General Fund) in the current year, and a total proposed increase of $73 million (General Fund) for the budget year.

The proposed budget adjustments address the following three areas, as outlined in the table below. Each of these areas of proposed adjustment will be discussed separately in the Agenda below (i.e., Issues A, B, and C).

Governor's Proposed Adjustments for SVP Program Changes

DMH Area of Adjustment	Proposed Current Year Increase (GF)	Proposed Budget Year Increase (GF)	Proposed Total Increase (GF) Across Both Years
Evaluation Costs	$15.2 million	$24.9 million	$40.1 million
State Hospital Caseload Costs	$12.1 million	$43.3 million	$55.4 million
Headquarters' Costs	$1.6 million	$4.8 million	$6.4 million
Total Proposed Increases	**$28.9 million**	**$73 million**	**$101.9 million**

Each of these issues is discussed *individually* in this Agenda below.

3A. Proposed Evaluation Costs for Changes to SVP Program

Issue. The budget proposes **an increase of $15.2 million (General Fund) in the current year and $24.9 million (General Fund) in the budget year for the anticipated increased number of evaluations to be performed for making SVP determinations.** The current year request has been submitted to the Joint Legislative Budget Committee (JLBC) for their consideration.

The DMH request for an increase of $24.9 million (General Fund) in the budget year consists of the components shown in the table below.

Table: Summary of Evaluation Components and Funding

Evaluation Component	Total Amount Requested for 2007-08 (GF)	Requested Increase for Budget Year (GF)	Percent of Cost Increase
Initial Evaluations ($3,835 per service)	$17.8 million (total of 4,644 services)	$15.5 million (increase of 3,717 services)	87%
Initial Court Testimony ($3,660 per service)	$5.4 million (total of 1,486 services)	$5.3 million (increase of 1,410 services)	98%
Evaluation Updates ($2,846 per service)	$2.3 million (total of 743 services)	$2.1 million (increase of 590 services)	91%
Recommitment Evaluations ($4,422 per service)	$533,000 (total of 159 services)	-$800,000 (decrease of 372 services)	-150% (decrease)
Recommitment Court Testimony ($3,828 per service)	$1.1 million (total of 296 services)	$302,000 (decrease of 138 services but increase in cost)	27%
Recommitment Updates ($2,844 per service)	$1.6 million (total of 578 services)	$1.2 million (increase of 291 services)	75%
Other miscellaneous other	$1.6 million	$1.3 million	81%
Totals (rounded)	**$30.4 million**	**$24.9 million**	**82%**

The Administration's proposed increase is primarily based on an increased volume of specified services to be provided due to anticipated caseload, along with a price increase in the contract evaluator rates to meet the current market demand for such services. **As noted above, the DMH is requesting an overall increase of $24.9 million (General Fund) or an 82 percent increase.**

Background—CA Department of Corrections & Rehabilitation (CDCR) Referral to the DMH. Specified sex offenders who are completing their prison sentences are referred by the CDCR and the Board of Parole Hearings to the DMH for screening and evaluation to determine whether they meet the criteria as SVP.

When the DMH receives a referral from the CDCR, the DMH does the following:

- *Screening*. The DMH screens referred cases to determine whether they meet legal criteria pertaining to SVPs to warrant clinical evaluation. Based on record reviews, about 42 percent are referred for evaluation. Those not referred for an evaluation remain with the CDCR until their parole date.

- *Evaluations.* Two evaluators (Psychiatrists and/or Psychologists), who are under contract with the DMH, are assigned to evaluate each sex offender while they are still held in state prison. Based on a review of the sex offender records, and an interview with the inmate, the evaluators submit reports to the DMH on whether or not the inmate meets the criteria for an SVP. If two evaluators have a difference of opinion, two additional evaluators are assigned to evaluate the inmate.

Offenders, who are found to meet the criteria for an SVP, as specified in law, are referred to District Attorneys (DAs). The DAs, then determine whether to purse their commitment by the courts to treatment in a State Hospital as an SVP.

If a petition for a commitment is filed, the clinical evaluators are called as witnesses at court hearings. Cases that have a petition filed, but that do *not* go to trial in a timely fashion may require updates of the original evaluations at the DA's request.

The amount of time it takes to complete the commitment process may vary from several weeks to more than a year depending on the availability of a court venue and the DA's scheduling of cases. While these court proceedings are pending, offenders who have not completed their prison sentences continue to be held in prison. *However*, if an offender's prison sentence has been completed, he or she may be held either in county custody or in a State Hospital.

Background—SB 1128 (Alquist), Statutes of 2006. This legislation made changes in law to generally increase criminal penalties for sex offences and strengthen state oversight of sex offenders. For example, it requires that SVPs be committed by the court to a State Hospital for an undetermined period of time rather than the renewable two-year commitment provided under previous law.

This law also mandates that every person required to register as a sex offender be subject to assessment using the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO) a tool for predicting the risk of sex offender recidivism.

Background—Proposition 83 of November 2006—"Jessica's Law". Approved in November 2006, this proposition increases penalties for violent and habitual sex offenders and expands the definition of an SVP. The measure generally makes more sex offenders eligible for an SVP commitment by **(1)** reducing from two to one the number of prior victims of sexually violent offenses that qualify an offender for an SVP commitment, and **(2)** making additional prior offenses "countable" for purposes of an SVP commitment.

Legislative Analyst's Office Recommendation—Reduce Both the Current Year Deficiency Request & the Budget Year Request. The LAO recommends reducing both the 2006-07 deficiency request as well as the Governor's budget year request for the SVP evaluations.

The LAO states that the number of evaluation updates and the number of court testimony episodes to be performed by the clinical evaluators will be lower than the number projected in the Governor's 2006-07 deficiency request and in his January budget plan. The LAO is basing their assessment on more recent data. The differences are shown in the tables below along with the General Fund (GF) savings amounts.

Table: 2006-07 Current Year Comparison and LAO Identified GF Savings

Evaluation Component	DMH Proposed Increase	LAO Calculation	GF Savings
Initial Court Testimony	$3.2 million (867 services)	$769,000 (210 services)	**$2.4 million (-657 services)**
Evaluation Updates	$1.4 million (495 services)	$435,000 (153 services)	**$965,000 (-342 services)**
Totals	$4.6 million	$1.2 million	**$3.4 million**

Table: 2007-08 Budget Year Comparison and LAO Identified GF Savings

Evaluation Component	DMH Proposed Increase	LAO Calculation	GF Savings
Initial Court Testimony	$5.4 million (1,486 services)	$2.6 million (705 services)	**$2.8 million (-781 services)**
Evaluation Updates	$2.1 million (743 services)	$839,000 (295 services)	**$1.3 million (-448 services)**
Totals	$7.5 million	$3.4 million	**$4.1 million**

Subcommittee Staff Recommendation—Hold Open. It is recommended to "hold" this issue "open" pending receipt of the Governor's May Revision and additional data based on current-year experiences, *and* to direct the Legislative Analyst's Office (LAO) to analyze the new information and provide a recommendation to the Subcommittee.

Questions. The Subcommittee has requested the DMH to respond to the following questions:

1. DMH, Please provide a brief description of the evaluation process and the budget request.

3B. Caseload Costs at the State Hospitals for Changes to SVP Program

Issue. The **budget proposes an increase of $12.1 million (General Fund) in the current-year and $43.3 million (General Fund) in the budget year due to projected increases in the Sexually Violent Predator (SVP) patient caseload at the State Hospitals.** The DMH contends caseload will significantly increase due to implementation of SB 1128 (Alquist), Statutes of 2006 and passage of Proposition 83.

The Administration's proposals are built upon two core assumptions. First, they assume a high-end volume of referrals (i.e., "worst-case scenario") to be sent by the CDCR over to the DMH for evaluation. **Second,** they assume that the same level of commitments—average of 8 percent now—will occur under the new laws (i.e., SB 1128, Statutes of 2006 and Proposition 83). **Both of these assumptions made by the Administration are open to question.**

It should be noted that Proposition 83 reduced from two to one the number of prior victims of sexually violent offenses that qualify an offender for an SVP commitment. Therefore, it will likely be more difficult for District Attorney's (DAs) to prove a pattern of predatory behavior and thus obtain an SVP commitment for sex offences with only one victim compared with two or more victims. **As such, a potentially significantly lower percent (i.e., less that the 8 percent assumed) of the CDCR referrals to the DMH may ultimately result in an SVP commitment under the new one-victim standard.** (The LAO recognizes this aspect in their analysis as discussed below in this Agenda.)

The tables below outline the Administration's proposal for both years. As required by existing statute, SVPs may only be treated at Atascadero State Hospital and Coalinga State Hospital.

Table: DMH Proposed Increase for 2006-07 (Current Year)

State Hospital	Proposed Caseload Increase	Proposed Staff Increase	Proposed General Fund Increase
Atascadero	66 patients	40 positions	$3.2 million
Coalinga	205 patients	103 positions	$8.9 million
Total	**271 patients**	**143 positions**	**$12.1 million**

For the budget year, an increase of 440 patients is assumed. Again, the DMH has assumed a "worst-case scenario" for their estimate. They assume the CDCR will refer about 5,528 individuals for evaluation and that 8 percent will be committed as SVPs into the State Hospital system.

Table: DMH Proposed Increase for 2007-08 (Budget Year)

State Hospital	Proposed Caseload Increase	Proposed Staff Increase	Proposed General Fund Increase
Atascadero	continues funding for 66 patients (phased-in)	79 positions	$6.3 million
Coalinga	440 patients (new and phased-in)	429 positions	$37 million
Total	**440 patients (new)**	**508 positions**	**$43.3 million**

Legislative Analyst's Office Recommendation—Requested Resources Should be Reduced. The LAO is recommending **(1)** a reduction of $6 million (General Fund) from the current year request; and **(2)** a reduction of $21.6 million (General Fund) from the budget year request. The differences are shown in the table below.

LAO Recommendations on Projected SVP Caseload Costs

Fiscal Year	DMH Proposed Increased Amount (GF)	LAO Recommended Level	LAO Identified Savings (GF)
2006-07	$12.1 million	$6.1 million	$6 million
2007-08	$43.3 million	$21.7 million	$21.6 million
Totals	$55.4 million	$27.8 million	$27.6 million

The LAO is recommending these reductions because they believe that a significantly lower percent of sex offender referrals from the CDCR to the DMH will result in an SVP commitment under the new one-victim standard. The LAO analysis indicates that the Administration's proposal does not sufficiently take into account the shift from a two-victim to a one-victim standard when projecting SVP caseload. **As such, the LAO assumes a 4 percent commitment level on an annual basis versus the 8 percent that the DMH uses.**

In addition, the LAO notes that the current year SVP caseload has *not* been increasing substantially. Specifically, from July 2006 through February 2007 there has only been an increase of 19 new SVP cases. **This increase of 19 SVPs is well below the 271 new SVPs upon which the Administration is basing their current-year request (i.e., the caseload has not yet materialized).**

Subcommittee Staff Recommendation—Hold Open. It is recommended to "hold" this issue "open" pending receipt of the Governor's May Revision and additional data based on current-year experiences, *and* to direct the Legislative Analyst's Office (LAO) to analyze the new information and provide a recommendation to the Subcommittee.

Questions. The Subcommittee has requested the DMH to respond to the following questions.

1. DMH, Please provide a brief description of the budget request.
2. DMH, Please discuss where these SVP patients would reside and why.

3C. DMH Headquarters' Administrative Costs for Changes to SVP Program

Issue. The DMH is **requesting an increase of $4.8 million (General Fund) for state support functions relating to changes in the SVP Program.** This request is in addition to a $1.6 million (General Fund) augmentation for the current year for which the LAO recommended approval to the Joint Legislative Budget Committee.

The $4.8 million (General Fund) request for the budget year consists of (1) $3.8 million (General Fund) to support 51.6 positions; **(2)** $215,000 in one-time only funding for consultants; and **(3)** $800,000 for various operating expenses.

As shown in the table below, a total of 44 positions at DMH headquarters in Sacramento and 7.6 positions at Coalinga State Hospital are being requested. The 44 positions at the DMH include 36 positions for the Sex Offender Commitment Program and 8 positions for administration functions.

With respect to the 36 positions requested for the DMH Sex Offender Commitment Program (SOCP) at the headquarters' office, the DMH contends that positions are needed to **(1)** process a higher volume of cases; **(2)** track new SVP cases, **(3)** oversee contract psychiatrist/psychologist evaluators; **(4)** conduct research; and **(5)** supervise the case review process.

Table: DMH Request for 51.6 Positions

Type of Position	DMH Sex Offender Commitment Prog.	DMH Administration & I.T. Support	Coalinga State Hospital
Consulting Psychologist	6		
Mental Health Prog Supervisor	4		
Staff Mental Health Specialist	3		
Associate Governmental Analyst	15	1	
Research Analyst	2		
Data Processing Manager II		1	
Senior Programmer Analyst		1	
Staff Programmer Analyst		1	
Associate Budget Analyst		1	
Senior Accounting Officer		1	
Associate Personnel Analyst		1	
Business Services Officer		1	
Staff Services Analyst			1 two-yrs
Health Records Technician			2
Office Technician	6		1 two-yrs
Hospital Peace Officer			3.6
Totals (51.6 total positions)	**36 positions**	**8 positions**	**7.6 positions**

The 8 administrative positions would be used for **(1)** information systems processing functions related to SVP tracking; **(2)** personnel functions; **(3)** accounting activities related to the payment of consultant evaluators; and **(4)** business services functions related to

various procurements.

The 7.6 positions at Coalinga State Hospital would be used to **(1)** provide security for the independent evaluators conducting the SVP evaluations; **(2)** process caseload materials; and **(3)** manage the workflow of the overall SVP evaluation process.

Background—DMH Sex Offender Commitment Program Staff. This section within the DMH headquarters office consists of 13 staff. These include (1) a Career Executive I, (2) a Consulting Psychologist, (3) a Staff Mental Health Specialist, (4) four Associate Mental Health Specialists, (5) a Research Specialist, (6) a Staff Services Analyst, and (7) four Office Technicians.

In addition to these 13 existing positions, the DMH has been given increased current-year budget authority to hire 12.7 positions, including (1) 7.4 positions within the SOCP; (2) 1.5 positions for information technology activities; and (3) 3.8 positions at Coalinga State Hospital.

Legislative Analyst's Office Recommendation—Hold Pending May Revision. The LAO is withholding their recommendation on this issue pending receipt of the Governor's May Revision. The LAO will have more data at this time as to how the changes in SVP law may result in increased workload for the DMH.

Subcommittee Staff Recommendation—Hold Open. The DMH will need additional resources in the Sex Offender Commitment Program (SOCP), as well as at Coalinga, to address the anticipated increased volume of work. **However, it appears that the DMH request could be adjusted downward.** First, the budget request assumes that 38 of the requested 51.6 positions start on July 1, 2007. Clearly, all of these positions will not be filled at this time, so a more phased-in funding approach could be used.

Second, the DMH only assumes a 40 percent efficiency rate in processing the cases. This work is done by the Associate Governmental Program Analyst positions. Since the DMH uses a lower efficiency rate, they are projecting a higher volume of staff need (i.e., 15 positions).

Third, the DMH is also using a formula for the ratio of clerical staff to professional staff and managerial staff to analyst staff. These ratios may be lower if less staff is needed based upon a revised workload analysis.

It is recommended to withhold any action at this time and to request the LAO to provide a recommendation on this issue at the Governor's May Revision when a more comprehensive workload need is available.

Questions. The Subcommittee has requested the DMH to respond to the following questions:

1. Please provide a brief description of the budget request and related assumptions.
2. Have the 12.7 positions for the current year been hired as yet? If not, what is the status of these hires?
3. Is it anticipated that this request will be updated at the May Revision?

4. Coleman v Schwarzenegger Salary Adjustments for Vacaville & Salinas

Issue. The DMH **is requesting an increase of $5.5 million (General Fund) for 2007-08 to enable the DMH to have salary parity with the CA Department of Corrections and Rehabilitation (CDCR) for staff at the Salinas Valley and Vacaville Psychiatric programs that provide treatment to CDCR inmates.**

Special Master Keating recommended increasing the compensation provided to CDCR's mental health clinicians including Psychiatrists, Psychologists, Psychiatric Social Workers, Occupational and Recreational Therapists, Registered Nurses, LVNs and medical transcribers, as well as supervisors in all these categories.

As such, the DMH is proposing salary parity for these same mental health classifications for those clinicians working in the DMH psychiatric programs located within the prisons.

Subcommittee Staff Recommendation—Approve with Technical Adjustment. Based on updated information recently obtained from the DMH, the budget request should be reduced by $336,000 (General Fund) to reflect the impact of the employee compensation letter issued by the Department of Personnel Administration. Salary equity for the DMH employees is vital and necessary.

Questions. The Subcommittee has requested the DMH to respond to the following questions.

1. DMH, Please provide a brief summary of the proposal and the technical adjustment.

5. Continued Activation of Coalinga State Hospital (CHS)—Non-Level-Of-Care

Issue. The DMH is requesting an increase of $5.6 million (General Fund) to fund 61 "non-level-of-care" positions at Coalinga State Hospital. These positions include a wide variety of personnel classifications such as medical record transcribers, accounting staff, food service workers, housekeeping staff, ware house personnel, pharmacists, engineers and others who are vital to the over all operations of the facility.

It should be noted that of the total increase, $513,000 is identified for recruitment and retention purposes and hiring personnel above the minimum step level.

Generally, this is the same request that was previously approved by the Legislature but was deleted by the Administration when it updated its budget since activation at Coalinga has been slower than anticipated.

Background—Coalinga State Hospital is Gradually Being Activated. CHS, a 1,500 bed facility located adjacent to the Pleasant Valley State Prison, admitted its first patients in September 2005. **However, due to historic problems in attracting personnel to fill vacancies—both clinical and "non-level-of-care"--, which has been compounded by recent CDCR salary increases, Coalinga has been very slow to activate and to fill its beds with patients.**

The DMH states that presently (as of March 1st) Coalinga provides treatment to 452 patients. The DMH notes that an additional 50 bed unit will be activated soon—possibly by May/June, 2007.

Subcommittee Staff Recommendation--Approve. The need to more assertively activate Coalinga is clear in order to appropriately manage the patient population at the State Hospitals. As such, it is recommended to approve this request for "non-level-of-care" staff.

However, if it appears that Coalinga is not phasing in more beds on-line, then this issue may be revised at the time of the Governor's May Revision.

Questions. The Subcommittee has requested the DMH to respond to the following questions.

1. DMH, Please provide a brief update on the activation of Coalinga State Hospital.
2. DMH, Please provide a brief summary of the need for the budget request.

6. Request for DMH Headquarters Support in Administration—Two Issues

Issues. **First,** the DMH is requesting **an augmentation of $470,000** ($362,000 General Fund and $108,000 Mental Health Services Fund) **to support 5.5 positions in the DMH headquarters' personnel and labor relations section.** These positions include a Staff Services Manager I, a Labor Relations Specialist, two Associate Personnel Analysts, a Personnel Specialist and a half-time Office Technician.

These positions would be used to address various personnel and labor relations issues due to increases in staff within the State Hospital system related to CRIPA Consent Judgment and *Coleman v. Schwarzenegger,* and the implementation of the Mental Health Services Act (Proposition 63 of 2005).

The DMH states that this proposed increase is essential for them to comply with all of the requirements of personnel administration, state regulations and bargaining contracts.

Second, the DMH is also proposing **an increase of $145,000** (General Fund) to hire a Staff Counsel III in the DMH Legal Office to assist in issues relating to *Coleman v. Schwarzenegger*. The DMH states that this position would participate in meetings, research and prepare written responses to the Special Master, respond to Public Records Act requests, prepare testimony and make court appearances.

Subcommittee Staff Recommendation—Approve with Adjustment. It is recommended to **(1)** approve as budgeted the 5.5 positions for personnel and labor relations given the needs identified, and **(2)** provide an entry level Staff Counsel position in lieu of the higher level Staff Counsel III position since the Attorney General's Office and CDCR are the lead entities on this court case.

Questions. The Subcommittee has requested the DMH to respond to the following questions.

1. DMH, Please provide a brief description of the request.

D. ISSUES FOR DISCUSSION – Community Mental Health

1. Mental Health Medi-Cal Managed Care—*Two Issues*

Issues. **First**, the budget reflects an increase of $8.3 million ($4.2 million General Fund) for local assistance. Of this increase, $8.2 million (total funds) is due to an increase in the number of Medi-Cal enrollees accessing County Mental Health Plan services. The remaining amount is attributable to technical adjustments. No issues have been raised regarding the caseload adjustments.

However, the Administration has failed to restore the 5 percent rate reduction enacted in 2003, and has chosen not to provide a medical consumer-price index adjustment which is contained in statute.

As contained in Assembly Bill 1762, Statutes of 2003, the Omnibus Health trailer legislation which accompanied the Budget Act of 2003, the Mental Health Managed Care program's state General Fund appropriation was reduced by 5 percent to reflect a rate reduction. This 5 percent rate reduction was also applied to health care plans participating in the Medi-Cal Managed Care Program administered by the Department of Health Services.

The 5 percent rate reduction was applicable from July 1, 2003 through January 1, 2007 (sunset date). **Funding has been restored for the health care plans within the DHS Medi-Cal Program effective January 1, 2007, but the DMH has chosen *not* to provide the rate restoration (for the current year or budget year).**

An increase of $12 million (General Fund) would be needed to restore the 5 percent rate reduction effective as of July 1, 2007. This would provide funding for the budget year. Any current year adjustment (i.e., from January 1, 2007 to June 30, 2007) would require urgency legislation and an appropriation of about $6 million (General Fund).

It should also be noted that the medical care price index adjustment (medical CPI), as contained in the enabling legislation for this program, was not funded by the Administration. An increase of $9.5 million (General Fund) would be needed to provide for this adjustment. **The last time a medical CPI was provided was in the Budget Act of 2000, or 7 years ago.**

Background—How Mental Health Managed Care is Funded: Under this model, County Mental Health Plans (County MHPs) generally are at risk for the state matching funds for services provided to Medi-Cal recipients and claim federal matching funds on a cost or negotiated rate basis. **County MHPs access County Realignment Funds (Mental Health Subaccount) for this purpose.**

An annual state General Fund allocation is also provided to the County MHP's. The state General Fund allocation is usually updated each fiscal year to reflect adjustments as contained in Chapter 633, Statutes of 1994 (AB 757, Polanco). These adjustments have included changes in the number of eligibles served, factors pertaining to changes to the

consumer price index (CPI) for medical services, and other relevant cost items. **The state's allocation is contingent upon appropriation through the annual Budget Act.**

Based on the most recent estimate of expenditure data for Mental Health Managed Care, County MHPs provided a 47 percent match while the state provided a 53 percent match. (Adding these two funding sources together equates to 100 percent of the state's match in order to draw down the federal Medicaid funds.)

Background—Overview of Mental Health Managed Care: Under Medi-Cal Mental Health Managed Care psychiatric inpatient hospital services and outpatient specialty mental health services, such as clinic outpatient providers, psychiatrists, psychologists and some nursing services, are the responsibility of a single entity, the Mental Health Plan (MHP) in each county.

Full consolidation was completed in June 1998. This consolidation required a Medicaid Waiver ("freedom of choice") and as such, the approval of the federal government. Medi-Cal recipients *must* obtain their mental health services through the County MHP.

The Waiver promotes plan improvement in three significant areas—access, quality and cost-effectiveness/neutrality. The DMH is responsible for monitoring and oversight activities of the County MHPs to ensure quality of care and to comply with federal and state requirements.

Constituent Concerns On Need for 5 Percent Rate Restoration. The Subcommittee is in receipt of a letter from the CA Mental Health Directors Association (CMHDA) and the CA State Association of Counties (CSAC) who are seeking funding for the 5 percent rate restoration. They contend that without this restoration, coupled with the continued lack of a medical CPI, their ability to provide services to their target population of seriously mentally ill indigent individuals will continue to erode, with more County Realignment revenues going to provide the match for Medi-Cal services.

In addition to the prior year's rate reduction, they note that the medical CPI has not been funded by the state since the Budget Act of 2000. Since this time, medical inflation increases have occurred and the costs for providing Psychiatric services and prescription drugs continue to grow.

Further, CMHDA and CSAC note that although the Mental Health Services Act (i.e., Proposition 63) provided new revenues for mental health services, revenues from this act cannot be used to supplant existing programs.

Subcommittee Staff Recommendation—Approve with Potential Adjustments. Mental Health Managed Care services are a core component to the public mental health system and it is important for the state to be a viable partner in the provision of resources provided towards this effort. The enabling statute for the 5 percent rate reduction had a sunset date that is applicable to all managed care plans. Consistency in the application of the rate restoration is only fair and equitable. Where is the parity for mental health services?

As such, it is recommended to **(1)** approve the technical caseload adjustments as proposed by the Administration, and **(2)** place $12 million (General Fund) for the 5 percent rate restoration on the Check List for consideration to fund at the May Revision.

Questions. The Subcommittee has requested the DMH to respond to the following questions:

1. DMH, Please provide a brief description of the Administration's budget request.
2. DMH, Why wasn't the five percent reduction restored as of January 1, 2007 as was done for all other Medi-Cal Managed Care health plans?

2. Significant Issues Regarding the Early, Periodic Screening and Treatment (EPSDT) Program Requires Legislative Oversight and Funding

Over All Issues. Significant issues have been raised regarding the DMH's administration of the Early, Periodic Screening and Treatment (EPSD) Program. **These layers of issues are intertwined and include the following:**

- A deficiency request of **at least $302.7 million** (General Fund) for past years owed to the County MHPs, *and* a budget year request for **an increase of $92.7 million** (General Fund);
- An accounting error which represents a significant portion of what is owed to the County MHPs;
- Double billing of the federal government (i.e., Medicaid/Medi-Cal funds) by the state (DMH and DHS);
- A pending federal audit report which *could* have additional General Fund implications;
- A claims processing method (i.e., billing system) which is manually operated;
- Use of an inaccurate methodology for estimating program expenditures for budgeting purposes;
- Use of a "cost settlement" process for closing out costs for past fiscal years;
- A lack of timeliness and accountability on the part of the Administration in informing the Legislature and bringing forth these issues (See hand outs for timeline); and
- Need for the Office of State Audits and Evaluations (OSAE), located within the Department of Finance, to conduct analyses and make recommendations in several areas.

Though monies are owed to County Mental Health Plans (County MHPs) for services provided in the EPSDT Program, the Legislature has a public obligation to conduct due diligence to ensure that public funds are appropriately utilized and that the DMH remedies their administrative missteps which have contributed to this situation.

The seriousness of these issues cannot be overstated. The EPSDT Program is the core public program that provides mental health treatment services to children and their families. It is imperative for the program to operate effectively and efficiently to ensure that quality services are provided to children and their families, and that providers of services are reimbursed in a timely manner (including County MHPs). Total program expenditures are estimated to be over $1 billion (total funds) for the current year.

Each of the issues referenced in the bullets above are described individually below to facilitate discussion and to identify constructive remedies in an effort to move forward.

Issue—Description of the Deficiency Request and the Accounting Error. The magnitude of the issues at hand were initially brought forward through a $243 million (General Fund) deficiency request submitted to the Joint Legislative Budget Committee (JLBC) on November 15, 2006, and then updated by the Administration to be a total of $302.7 million (General Fund) on January 10, 2007.

In a letter dated January 18, 2007, Senator Ducheny, as Chair of the JLBC, articulated considerable concerns to the Administration regarding the various contributing factors that created the deficiency, as well as the late timing and inadequacy of information provided to the Legislature.

The table below displays the component pieces to the deficiency request. In addition, the table also shows the requested increase of $ million (General Fund) for 2007-08.

Table: Fiscal Summary EPSDT Deficiency Request Received To Date	**Fiscal Year**	**General Fund Amount**
Cost Settlement Amount (closing out of fiscal year)	2003-04	$13.7 million
Shortfall Due to "Misestimating"	2004-05	$17.6 million
Shortfall Due to "Misestimating"	2005-06	$34.7 million
Error Due to Shift In Accounting Per Administration (Shifting GF from DHS to DMH responsibility)	2005-06	$177 million
Subtotal for Prior Years (rounded)		**$243 million**
Requested Increase For the Current Year (CY)	2006-07	**$59.7 million**
Total Deficiency Request (Prior Years & CY)		**$302.7 million**
Request for Budget Year (2007-08)		**$92.7 million**

A brief description of each component, as shown in the table, is provided below:

- Cost Settlement Amount ($13.7 million): The DMH uses a "cost settlement" process as part of its EPSDT claims reimbursement (i.e., billing and reconciliation). The cost settlement is completed prior to the end of the third year, after the close of said fiscal year. This means that the 2003-04 fiscal year is "cost settled" at the time of the May Revision for 2006-07, and the 2004-05 fiscal year will be "cost settled" at the time of the May Revision for 2007-08 (i.e., May 2007 date). In essence, it is how the DMH closes their books for the EPSDT Program for that fiscal year.

- Shortfall Due to Misestimating (total of $52.3 million): The estimating method presently used by the DMH for the EPSDT Program is flawed. The DMH's estimating method was last revised in 2003 at the behest of the Legislature since the prior method was not accurate. The Administration recognizes it needs to be changed and has asked the Office of State Audits & Evaluation to critique it and offer recommendations.

Of the prior year amounts owed by the state, the DMH attributes a total of $52.3 million (for the two fiscal years shown in the table below) to this "misestimating" which reflects the flawed methodology presently used to estimate EPSDT costs for budget purposes. The present estimating methodology is under-estimating the need for resources.

- Error Due to Shift In Accounting Per Administration ($177 million). In an effort to simplify the budget process for the Medi-Cal Program, the Administration has been gradually shifting "non-DHS" Medi-Cal expenditures to the departments who administer the applicable program. Therefore as part of this effort, the General Fund support for the EPSDT Program was shifted from the DHS to the DMH (responsible department for EPSDT mental health services). This shift occurred in the Budget Act of 2006.

  However as part of this shift, the Administration did not recognize that a General Fund adjustment would be necessary since the DHS Medi-Cal Program operates on a "cash" accounting system and the DMH EPSDT operates on an "accrual" accounting system. Therefore as described by the Administration, the shift of resources created a significant funding gap that has resulted in a General Fund shortfall.

- Requested Increase for the Current Year (2006-07) ($59.7 million). The last piece of the deficiency identified by the Administration is a request to increase the current year by $59.7 million (General Fund). Technically, these funds are not yet "owed" to the County MHPs. This $59.7 million is an estimate of the amount the DMH believes it needs to increase by in order to balance this fiscal year once all of the claims are received and processed. County MHPs are presently receiving payments in the current year for services billed to the EPSDT Program (i.e., there are funds available to the DMH to pay claims).

Issue—The Administration Double Billed the Federal Government Which Then Lead to Additional Problems. Late in 2005, the DMH discovered it had been over-billing the federal government (federal Medicaid/ Medi-Cal Program funds) for EPSDT for fiscal years 2003-04 and 2004-05. The DMH notified the DHS (the state's Medi-Cal agency), who in turn, notified the federal Centers for Medicaid and Medicare (CMS) of the possible over-billing.

The DMH stopped the process that caused the over-billing; however, the DMH then needed to review and reconcile all EPSDT claims payments for 2003-04 and 2004-05 to determine the amount of federal funds the state had over-billed and needed to pay back. I

For 2003-04, the DMH has completely reconciled the federal funds portion of the EPSDT claims paid to the counties with the receipts of federal fund reimbursements received from the DHS. The state has paid back $128 million (federal funds) of the $136.8 million (federal funds) owed to the federal government. The state paid these funds back using federal funds that had not been expended (i.e., state had excess federal funds due to

double claiming). **However, about $8.8 million still needs to be paid back.**

For 2004-05, the DMH has completed EPSDT claims reconciliations for only the first six months of the fiscal year (i.e., through December 2004). An overpayment of $82.8 million was identified for this period and the state has paid this amount back. **It is anticipated that the DMH will complete their reconciliation of the last two quarters of this fiscal year (i.e., January to June 30, 2005) by the end of March, 2007.**

As a result of this federal over-billing, the DMH and DHS, as well as the federal CMS began stricter and closer reviews of all EPSDT claims being processed and required additional documentation from the County MHPs. **This additional oversight caused backlogs in processing *all* claims submitted for payment. This contributed to the significant amount of 2004-05 and 2005-06 General Fund claims that had not been processed prior to July 1, 2006. Thus payments made by the DMH to the County MHPs were extremely slow, lagging by about six months.**

The federal CMS conducted an audit of the EPSDT over-billing problem and held an exit conference with the Administration on December 5, 2006; however, the federal CMS has not yet issued a final audit report.

Though the Administration states that they do not *anticipate* any federal fund exceptions, it is unclear as to whether this will come to fruition until more is known. The last six months of the 2004-05 claims need to be reconciled, and comments regarding the federal audit need to be received. Further, the DMH has not yet fully repaid the federal government for some of the over billing. It is not clear why this has not occurred.

Issue—DMH EPSDT Claims Processing System (See Hand Out). As noted by OSAE, the LAO and others, the EPSDT claims processing system needs to be restructured. It is a partially manual process that has few checks and balances for oversight. The claims processing system must account for certain county baseline payments, state General Fund payments and federal fund payments, which based on the issues outlined above, it apparently is not doing.

The DMH regulations enable County MHPs to submit claims up to 16 months *after* the month of service. Though most County MHP claims are submitted within 6 months, it takes the state typically 10 months to fully process the claim. Through this process, County MHPs receive an interim payment for services that are anticipated to occur over their baseline (County MHPs have a level of funding they must provide first before state General Fund is used). The program must then be “cost settled”.

This “cost settlement” process does not become finalized until 3 years after the fiscal year (i.e., the 2004-05 fiscal year is “cost settled” at the time of the May Revision in 2007). As discussed above, this has been problematic.

Issue—Inaccurate Methodology for Estimating Expenditures for Budgeting Purposes. As noted by the LAO and OSAE, the DMH needs to completely revamp its method for estimating EPSDT expenditures for budget purposes. The OSAE report provides recommendations for the Administration to consider for these purposes. (The Subcommittee has requested OSAE to discuss these recommendations in the hearing.)

Issue—Lack of Timeliness in Informing the Legislature (See Hand Out). As noted by the LAO, Senator Ducheny's letter, and the Timeline provided by the Administration, the DMH's response to concerns lacked timeliness and contributed to the scope of the issues at hand. Comprehensive "action steps" from the Administration are needed in order to ensure that an efficient, cost-beneficial program is being operated. The Administration needs to provide the Legislature with concrete objectives and timelines for improving the administration of the program, as well as assurances that they will work with collaboratively with their County MHP partners.

Issue—Office of State Audits and Evaluations (Department of Finance) Scope of Work (See Hand Out). As noted in the hand out package, the OSAE has been requested by the Administration to conduct several projects, including the following:

- Evaluation of EPSDT budget estimation methodology (to be released on March 8th);
- Evaluation of EPSDT comprehensively (to be completed in September 2007);
- Evaluation of all other DMH administered local assistance programs (to be completed December 2007).

Background-- How the EPSDT Program Operates. Most children receive Medi-Cal services through the EPSDT Program. Specifically, EPSDT is a federally mandated program that requires states to provide Medicaid (Medi-Cal) recipients under age 21 any health or mental health service that is medically necessary to correct or ameliorate a defect, physical or mental illness, or a condition identified by an assessment, including services not otherwise included in a state's Medicaid (Medi-Cal) Plan. Examples of mental health services include family therapy, crisis intervention, medication monitoring, and behavioral management modeling.

Though the DHS is the "single state agency" responsible for the Medi-Cal Program, mental health services including those provided under the EPSDT, have been delegated to be the responsibility of the Department of Mental Health (DMH). Further, County MHPs are responsible for the delivery of EPSDT mental health services to children

In 1990, a national study found that California ranked 50th among the states in identifying and treating severely mentally ill children. **Subsequently due to litigation (T.L. v Kim Belshe' 1994), the DHS was required to expand certain EPSDT services, including outpatient mental health services.** The 1994 court's conclusion was reiterated again in 2000 with respect to additional services (i.e., Therapeutic Behavioral Services—TBS) being mandated.

County MHPs must use a portion of their County Realignment Funds to support the EPSDT Program. Specifically, a "baseline" amount was established as part of an interagency agreement in 1995, and an additional 10 percent requirement was placed on the counties through an administrative action in 2002. **As such counties provided about $77.3 million in County Realignment Funds to support the EPSDT Program in 2006-07.**

Legislative Analyst's Office—EPSDT Claims Processing and Budget Estimating System Needs an Overhaul. The LAO has articulated significant concerns with the DMH's operation of the EPSDT Program with regards to their claims processing and budget estimating process.

As such, the LAO is recommending to "hold open" both the current year deficiency request, as well as the budget year request, pending receipt of a revised EPSDT estimating methodology as well as receipt of the OSAE findings and recommendations.

The LAO also notes in her *Analysis* on page C-98, that the DMH did not bring forth the EPSDT deficiency problems in a timely manner and that the lapses in timing indicates the lax fiscal administration of this program by the Department.

Subcommittee Staff Recommendation—Hold Open. The DMH needs to immediately develop a comprehensive work plan to address these interlocking issues, and to restore faith in their ability to appropriate administer this vital program. County MHPs do need to be paid monies owed to them for services provided; however, additional information needs to be provided by the Administration before this can reasonably occur. It is recommended for the Administration to report back to the Subcommittee in April, with a work plan and suggested steps to move forward.

Questions. The Subcommittee has requested the DMH *and* OSAE to respond to the following questions.

1. DMH, Using the chart on page 30, please briefly discuss each one of the deficiency issues.
2. DMH, Please provide an update on the federal double billing issue. Is there *any* potential for General Fund risk due to the need to pay back the federal government? Do we know when the federal audit results will be forthcoming?
3. DMH, Is there any potential need for the DMH to recoup EPSDT payments from the County Mental Health Plans?
4. **OSAE**, Please provide a brief summary of your key findings thus far, and a quick summary of future work items for the DMH.
5. DMH, What action steps is the department taking to remedy the existing situation and what are the specific timeframes for these action steps?
6. DMH, What specific changes may the department make to the Cost Settlement process and what are the timelines for making these changes? Does the department have the administrative authority to make changes to this process?
7. DMH, How does the department intend to keep the Subcommittee informed of progress regarding the EPSDT Program and these issues?

3. Governor Proposes Elimination of the Integrated Services for Homeless Mentally Ill Program (Assembly Bill 2034 (Steinberg), Statutes of 2000)

Issue. The Administration **is proposing elimination of the Integrated Services for Homeless Mentally Ill Program as established by AB 2034 (Steinberg), for a reduction of $54.9 million (General Fund).**

The Administration notes that AB 2034 projects are efficacious and served as the principle model for the design of Proposition 63—the Mental Health Services Act—of 2005. The reduction is being proposed solely for the purpose of reducing General Fund.

Background—Integrated Services for Homeless Mentally Ill Program (See Hand Out). This is a competitive grant program that provides state General Fund support to counties. The enabling legislation was adopted on a bipartisan basis. Presently, 34 counties receive grants that total $54.9 million. The program has been independently evaluated on several occasions and has had measurable outcomes as noted below:

- 56 percent reduction in the number of days hospitalized;
- 72 percent reduction in the number of days incarcerated;
- 67 percent reduction in the number of days spent homeless;
- 65 percent increase in the number of days employed full-time; and
- 280 percent increase in the number of individuals receiving wages.

The average cost per individual served is $12,000 annually.

Background—Proposition 63 (Mental Health Services Act). The Mental Health Services Act addresses a broad spectrum of prevention, early intervention and service needs and the necessary infrastructure, technology and training elements that will effectively support the local mental health system.

The Act imposes a one percent income tax on personal income in excess of $1 million. The total resources available in the Mental Health Services Account are $3 billion for 2006-07 and $4.3 billion for 2007-08. Of this amount, the Governor's budget proposes total expenditures of $517.9 million for 2006-07 and $1.5 billion for 2007-08, most of which is for local assistance. (The Subcommittee will discuss this Act in more detail at a later Subcommittee hearing.)

Among other things, the Act requires these funds to be used to supplement and not supplant existing resources. **The clear intent of the Act is to expand mental health funding.**

Subcommittee Staff Recommendation. It is recommended to place the restoration of this program onto the check list to potentially fund at the May Revision.

Questions. The Subcommittee has requested the DMH to respond to the following questions.

1. DMH, Please explain why such a valuable and efficacious program is proposed for elimination.
2. DMH, Please provide the Administration's perspective on maintenance of effort as it applies to the state's resources as contained in Proposition 63—the Mental Health Services Act.
3. DMH, Does the state have any authority to direct County MHPs on how to expend monies provided under the Mental Health Services Act?